

**REMARKS**

It should be noted that the fact that January 24, 2009 fell on a Saturday ensures this paper is timely filed as of Monday, January 26, 2009, the next business day.

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. The Office is respectfully requested to reconsider the rejections presented in the outstanding Office Action in light of the following remarks.

This submission is made in response to the Final Office Action dated November 24, 2008. Claims 1-23 were pending in the instant application at the time of the outstanding Office Action. Of these claims, Claims 1, 12 and 23 are independent claims; the remaining claims are dependent claims.

**Rejections under 35 U.S.C. § 112**

Claims 1-23 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Specifically, the Examiner asserts that the following claim language is unclear and indefinite: "...it is uncertain what the relationships are amongst "RFC" of line 2 [of claim 1], "individual tasks" of line 5 and "job" of line 8...i.e. it seems that RFC is composed of tasks, if so, jobs are also part of RFC?" Office Action, pp. 2. The Examiner then suggests that consistent names should be used. Applicants respectfully disagree.

An RFC (request for change) corresponds to a "job" which in turn is composed of "tasks". *Specification*, pp. 9, lines 5-15. Therefore, Applicants respectfully

submit that the claim language is clear in view of the specification and request reconsideration and withdrawal of these rejections. The Examiner is invited to contact the undersigned at the telephone number listed below if confusion persists or if alternative claim language will facilitate expeditious prosecution of this case.

**Claim Rejections under 35 U.S.C. § 102**

Claims 1, 12 and 23 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Hayes (U.S. Patent Pub. No. 2002/0198923, hereinafter “Hayes”). Applicants respectfully request reconsideration and withdrawal of these rejections.

As best understood, Hayes (a commonly assigned patent application) teaches a dynamic load-balancing scheme which attempts to prevent servers performing dynamic client requests from being overloaded in a network-connected environment. *Hayes*, Abstract. Among the many differences, Hayes specifically does not teach or suggest “for each RFC to be done, assigning individual tasks within each RFC to acceptable servers”, as per the instantly claimed invention. Claim 1. Hayes merely assigns earliest start times. This is critical because the instant invention assigns exact starting times and assigns the server(s) that will perform the task. As another example of the clear differences between Hayes and the instantly claimed invention, Hayes assumes jobs consist of a single task. In stark contrast, the instantly claimed invention makes clear a collection of multiple tasks. See claim 1.

Therefore, Applicants respectfully request reconsideration and withdrawal of these rejections.

**Rejections under 35 U.S.C. 103(a)**

Claims 3 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hayes in view of “A Duality Approach to Admission and Scheduling Controls of Queues” to Susan H. Xu (hereinafter “Xu”); Claims 4-7, 10-11, 15-18, 21-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hayes in view of “Games, Critical Paths, and Assignment Problems in Permutation Flow Shops and Cyclic Scheduling Flow Line Environments” to Kiran (hereinafter “Kiran”); Claims 2, 8-9, 13, 19-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hayes in view of Crawford et al. (U.S. Patent No. 6,456,996) (hereinafter “Crawford”). Reconsideration and withdrawal of the rejections is hereby respectfully requested.

Applicants respectfully submit that the references fail to teach or suggest all the claim limitations. The Examiner is kindly reminded that “[w]hen determining whether a claim is obvious, an examiner must make a searching comparison of the claimed invention – *including all its limitations* – with the teaching of the prior art. Thus, obviousness requires a suggestion of all limitations in a claim. Moreover, as the Supreme Court recently stated, *there must be some articulated reasoning* with some rational underpinning to support the legal conclusion of obviousness.” *Ex parte H. Garrett Wada et al.*, pp. 7, Appeal No. 2007-3733 (BPAI January 14, 2008) (internal quotation marks and citations omitted) (emphasis in original) (reversing Examiner’s obviousness rejection).

Applicants respectfully submit that the art of record does not overcome the deficiencies of Hayes, as above. Therefore, Applicants respectfully submit that the art of record, even when considered in combination, fails to teach or suggest the limitations of the claimed invention. Accordingly, Applicants respectfully request reconsideration and withdrawal of these rejections.

Moreover, Applicants respectfully submit the following regarding Xu. Applicants specifically disagree with the Examiner's assertion that Xu teaches the limitations of claims 3 and 14. Applicants respectfully submit that Xu contains no such teachings. Applicants further submit that Xu amounts to non-analogous art because Xu would not logically commend itself to an inventor's attention, as the problem contemplated by Xu is completely different than the one solved by the instantly claimed invention. MPEP § 2141.01(a). Therefore, even if Xu did contain such teachings (which it does not), citation of such teachings would be improper.

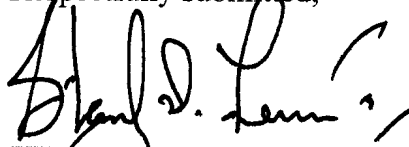
In summary, Applicants respectfully submit that the art of record fails, even when considered in combination, to teach or suggest the claimed invention. Accordingly, Applicants respectfully request reconsideration and withdrawal of these rejections.

**Conclusion**

In view of the foregoing, it is respectfully submitted that Claims 1, 12, and 23 fully distinguish over the applied art and are thus in condition for allowance. By virtue of dependence from what are believed to be allowable independent Claims 1 and 12, it is respectfully submitted that Claims 2-11, and 13-22 are also presently allowable.

In summary, it is respectfully submitted that the instant application, including Claims 1-23, is presently in condition for allowance. Notice to the effect is earnestly solicited. If there are any further issues in this application, *the Examiner is invited to contact the undersigned at the telephone number listed below.*

Respectfully submitted,



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